APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,084	11/25/2003	Seiichi Kawano	JP920000184US2 (4134P)	7151

54161   7590   08/03/2010
Lenovo (United States) Inc.
c/o Sawyer Law Group, P.C.
P.O. Box 51418
Palo Alto, CA 94303

EXAMINER
PIZIALI, JEFFREY J

ART UNIT	PAPER NUMBER
2629	

NOTIFICATION DATE	DELIVERY MODE
08/03/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@sawyerlawgroup.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/722,084
Filing Date: November 25, 2003
Appellant(s): KAWANO, SEIICHI

Renee R. Reid (Reg. No. 52,159)
<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed on *10 May 2010* appealing from the Office

action mailed on *8 September 2009*.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The appellant's statement of the status of claims contained in the brief is incorrect.

The appellant inaccurately states, "*Claims 1, 2, 7, 8 are rejected under U.S.C. 102(b) as being anticipated by Kidder et al. (US 5,822,599 A)("Kidder")*" (see page 3 of the brief).

In actuality, *Claims 1 and 6-8* are rejected under 35 U.S.C. 102(b) as being anticipated by *Kidder (US 5,822,599 A)*.

The following is a list of claims that are rejected and pending in the application:

Claims 1, 2, and 6-8 are rejected and pending in the application.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The appellant inaccurately states, "*Claims 7 and 8 have been amended to correct corresponding lack of antecedent basis*" (see page 4 of the brief).

Since the mailing of the most recent (*8 September 2009*) Office action, no amendments have been submitted by the appellant.

The most recent set of claims were filed on *5 August 2009*.

Claims 7 and 8, as filed on *5 August 2009*, include subject matter lacking antecedent basis.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is incorrect.

Claims 7 and 8 (as listed on pages 6-7 of the brief) are different from the most recent set of claims (as filed on *5 August 2009*).

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant states, "*Appellant requests review as to claims 1, 2, 7, 8 and their rejection under U.S.C. 102(b) as being anticipated by Kidder*" (see page 4 of the brief).

It is respectfully submitted that claim 2 is not rejected as being anticipated by *Kidder*.

Moreover, it is respectfully noted that the appellant does not request review of the rejection of claim 6 under U.S.C. 102(b) as being anticipated by *Kidder*.

Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claim 2 under 35 U.S.C. 112, second paragraph, as being indefinite due to the term "***RGB***" in claim 2 (*line 3*) being considered a relative term (see paragraph 12 on page 7 of the *8 September 2009* Office action), is hereby withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the appellant's brief is incorrect.

Claims 7 and 8 (as listed on page 23 of the brief) are different from the most recent set of claims (as filed on *5 August 2009*).

(8) Evidence Relied Upon

| 6,556,253 B1 | Megied et al. | 4-2003 |
| 5,822,599 A | Kidder et al. | 10-1998 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2.   *Claims 1, 2, and 6-8* are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claim 1 recites, "*a brightness adjusting system, comprising:*

a display gradation calculator to <u>calculate a first display brightness in a first application displayed in a first window</u> on a display unit; and

a brightness adjuster to <u>adjust a screen display brightness of the display unit according to the first display brightness</u>, wherein

in response to a second application being displayed in a second window on the display unit,

the display gradation calculator <u>calculating a second display brightness of the second window</u>, and

the brightness adjuster <u>adjusting the screen display brightness of the display unit according to a type of application of the second application</u>."

This "*first/second applications displayed in first/second windows*" subject matter is not found in the original disclosure of the invention.

Claim 6 recites, "*the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application.*"

This "*word processing, spreadsheet application, and image processing application*" subject matter is not found in the original disclosure of the invention.

Claim 8 recites, "*a brightness adjusting system, comprising:*

a display gradation calculating means for <u>calculating a first display brightness in a first application displayed in a first window</u> on a display unit; and

a brightness adjusting means for <u>adjusting a screen display brightness of the display unit according to the first display brightness</u>,

wherein in response to a second application being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjusting means adjusting the screen display brightness of the display

unit according to a type of application of the second application."

This "*first/second applications displayed in first/second windows*" subject matter is not

found in the original disclosure of the invention.

3.   *Claims 1, 2, and 6-8* are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the enablement requirement.

The claim contains subject matter which was not described in the specification in such a

way as to enable one skilled in the art to which it pertains, or with which it is most nearly

connected, to make and/or use the invention.

Claim 1 recites, "*a brightness adjusting system, comprising:*

a display gradation calculator to calculate a first display brightness in a first

application displayed in a first window on a display unit; and

a brightness adjuster to adjust a screen display brightness of the display unit according

to the first display brightness, wherein

in response to a second application being displayed in a second window on the display

unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster <u>adjusting the screen display brightness of the display unit</u>

<u>according to a type of application of the second application</u>."

This "*first/second applications displayed in first/second windows*" subject matter is not enabled by the original disclosure of the invention.

Claim 6 recites, "*the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application*."

This "*word processing, spreadsheet application, and image processing application*" subject matter is not enabled by the original disclosure of the invention.

Claim 8 recites, "*a brightness adjusting system, comprising:*

a display gradation calculating means for <u>calculating a first display brightness in a first application displayed in a first window on a display unit</u>; and

a brightness adjusting means for <u>adjusting a screen display brightness of the display unit according to the first display brightness</u>,

wherein in response to a second application being displayed in a second window on the display unit,

the display gradation calculator <u>calculating a second display brightness of the second window</u>, and

the brightness adjusting means <u>adjusting the screen display brightness of the display unit according to a type of application of the second application</u>."

This "***first/second applications displayed in first/second windows***" subject matter is not enabled by the original disclosure of the invention.

4.   The remaining claims are rejected under 35 U.S.C. 112, first paragraph, as being dependent upon rejected base claims.

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6.   *Claims 1, 2, and 6-8* are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7.   Claim 1 recites the limitation "***type of application***" (*line 10*). The addition of the word "*type*" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. Ex parte Copenhaver, 109 USPQ 118 (Bd. App. 1955). It would be unclear to one having ordinary skill in the art what "*type*" is intended to convey. See MPEP 2173.05(b).

8.   Claim 2 recites the limitation "***the specific area***" (*line 4*). There is insufficient antecedent basis for this limitation in the claim.

9.   Regarding claim 2, the lack of a period renders the claim indefinite.

It would be unclear to one having ordinary skill in the art where the claimed subject

matter ends, thereby rendering the scope of the claim unascertainable. See MPEP § 2173.

10.   Claim 7 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for

omitting essential structural cooperative relationships of elements, such omission amounting to a

gap between the necessary structural connections. See MPEP § 2172.01.

An omitted structural cooperative relationship results from the claimed subject matter: "*a*

window" (*claim 7, line 3*).

It would be unclear to one having ordinary skill in the art whether this limitation is

intended to refer to the earlier claimed, "*first window*" (*claim 1, line 3*) and/or "*second window*"

(*claim 1, line 6*).

11.   Claim 7 recites the limitation "*the display brightness*" (*line 6*). There is insufficient

antecedent basis for this limitation in the claim.

It would be unclear to one having ordinary skill in the art whether this limitation is

intended to refer to the earlier claimed, "*first display brightness*" (*claim 1, line 2*); "*screen*

display brightness" (*claim 1, line 4*); and/or "*second display brightness*" (*claim 1, line 7*).

12.   Claim 8 recites the limitation "*the display gradation calculator*" (*line 7*). There is

insufficient antecedent basis for this limitation in the claim.

13.   Claim 8 recites the limitation "*type of application*" (*line 10*). The addition of the word

"*type*" to an otherwise definite expression extends the scope of the expression so as to render it

indefinite. Ex parte Copenhaver, 109 USPQ 118 (Bd. App. 1955). It would be unclear to one

having ordinary skill in the art what "*type*" is intended to convey. See MPEP 2173.05(b).

Claim Rejections - 35 USC § 102

14.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15.   *Claims 1, 2, 7, and 8* are rejected under 35 U.S.C. 102(e) as being anticipated by **Megied**

et al (US 6,556,253 B1).

        Regarding claim 1, **Megied** discloses a brightness adjusting system [*e.g., Fig. 2*],

comprising:

        a display gradation calculator [*e.g., Fig. 2: 400*] to calculate a first display brightness in a

first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig.

2: 120, 120'*]; and

a brightness adjuster [*e.g., Fig. 2: 117*] to adjust a screen display brightness of the display

unit according to the first display brightness (*see the entire document, including the Abstract and*

Column 2, Line 58 - Column 4, Line 59), wherein

in response to a second application being displayed in a second window [*e.g., Fig. 1A:*

W1-W4] on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application [*e.g., a bright or dark "type of application" -- i.e., wherein the*

"type of application" is an application exhibiting high luminance or low luminance] of the

second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line*

17).

Regarding claim 2, **Megied** discloses the display gradation calculator calculates the first

and second display brightness by converting a gradation of RGB elements in a draw signal of an

image displayed in the specific area [*e.g., Fig. 1A: W1-W4*] to a gray scale gradation (*see the*

entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

Regarding claim 7, **Megied** discloses a window manager [*e.g., Fig. 2: 111-114, 400*] to

detect a window [*e.g., Fig. 1A: W1-W4*] in focus [*e.g., active, selected by a user*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to

the second display brightness (*see the entire document, including the Abstract and Column 1,*

Line 15 - Column 2, Line 17).

Regarding claim 8, this claim is rejected by the reasoning applied in rejecting claim 1;

furthermore, **Megied** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculating means [*e.g., Fig. 2: 400*] for calculating a first display

brightness in a first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display

unit [*e.g., Fig. 2: 120, 120'*]; and

a brightness adjusting means [*e.g., Fig. 2: 117*] for adjusting a screen display brightness

of the display unit according to the first display brightness (*see the entire document, including*

the Abstract and Column 2, Line 58 - Column 4, Line 59),

wherein in response to a second application being displayed in a second window [*e.g.,*

Fig. 1A: W1-W4] on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjusting means adjusting the screen display brightness of the display unit

according to a type of application [*e.g., a bright or dark "type of application" -- i.e., wherein the*

"type of application" is an application exhibiting high luminance or low luminance] of the

second application

(see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17).

16.   *Claims 1 and 6-8* are rejected under 35 U.S.C. 102(b) as being anticipated by ***Kidder (US 5,822,599 A)***.

Regarding claim 1, ***Kidder*** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 202*] to calculate a first display brightness in a first application [*e.g., word processing, spreadsheet, graphics illustrator program*] displayed in a first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjuster [*e.g., Fig. 2: 224*] to adjust a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*), wherein

in response to a second application [*e.g., word processing, spreadsheet, graphics illustrator program, email update*] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second window, and

the brightness adjuster adjusting the screen display brightness of the display unit according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the boundaries of the active area may be based on such factors as: the type of application program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities*

currently being executed by the application program; or, preferences submitted by an operator

of the computer system."] of the second application

(*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Regarding claim 6, **Kidder** discloses a method [*e.g., Fig. 3*], wherein the first application

comprises a word processing application or a spreadsheet application and

the second application comprises an image processing application (*see the entire*

document, including Column 3, Line 54 - Column 4, Line 12).

Regarding claim 7, **Kidder** discloses a window manager [*e.g., Fig. 2: 224, 226*] to detect

a window in focus [*e.g., Figs. 1-2: active*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to

the second display brightness (*see the entire document, including the Abstract and Column 2,*

Line 1 - Column 4, Line 3).

Regarding claim 8, this claim is rejected by the reasoning applied in rejecting claim 1;

furthermore, **Kidder** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculating means [*e.g., Fig. 2: 202*] for calculating a first display

brightness in a first application [*e.g., word processing, spreadsheet, graphics illustrator*

program] displayed in a first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjusting means [*e.g., Fig. 2: 224*] for adjusting a screen display brightness

of the display unit according to the first display brightness (*see the entire document, including*

the Abstract and Column 2, Line 1 - Column 4, Line 3),

wherein in response to a second application [*e.g., word processing, spreadsheet, graphics*

illustrator program, email update] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjusting means adjusting the screen display brightness of the display unit

according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the*

boundaries of the active area may be based on such factors as: the type of application program

currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities

currently being executed by the application program; or, preferences submitted by an operator

of the computer system."] of the second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line*

17).

Claim Rejections - 35 USC § 103

17.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a person
having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
manner in which the invention was made.

18.   In the alternative, *claims 1, 2, and 6-8* are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Megied et al (US 6,556,253 B1)** in view of **Kidder (US 5,822,599 A)**.

Regarding claim 1, **Megied** discloses a brightness adjusting system [*e.g., Fig. 2*],

comprising:

a display gradation calculator [*e.g., Fig. 2: 400*] to calculate a first display brightness in a

first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig.

2: 120, 120'*]; and

a brightness adjuster [*e.g., Fig. 2: 117*] to adjust a screen display brightness of the display

unit according to the first display brightness (*see the entire document, including the Abstract and

Column 2, Line 58 - Column 4, Line 59*), wherein

in response to a second application being displayed in a second window [*e.g., Fig. 1A:

W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application [*e.g., a bright or dark "type of application" -- i.e., wherein the

"type of application" is an application exhibiting high luminance or low luminance*] of the

second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line

17*).

Should it be shown that ***Megied*** teaches "*first/second applications displayed in*

first/second windows" subject matter with insufficient specificity:

Kidder discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 202*] to calculate a first display brightness in a

first application [*e.g., word processing, spreadsheet, graphics illustrator program*] displayed in a

first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjuster [*e.g., Fig. 2: 224*] to adjust a screen display brightness of the display

unit according to the first display brightness (*see the entire document, including the Abstract and*

Column 2, Line 1 - Column 4, Line 3), wherein

in response to a second application [*e.g., word processing, spreadsheet, graphics*

illustrator program, email update] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the*

boundaries of the active area may be based on such factors as: the type of application program

currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities

currently being executed by the application program; or, preferences submitted by an operator

of the computer system."] of the second application

(*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

Megied and *Kidder* are analogous art, because they are from the shared inventive field of display brightness adjustment systems.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to display *Kidder's* application programs in *Megied's* windows, so as to provide brightness adjustment control while displaying well known, commercially popular window applications.

Regarding claim 2, *Megied* discloses the display gradation calculator calculates the first and second display brightness by converting a gradation of RGB elements in a draw signal of an image displayed in the specific area [*e.g., Fig. 1A: W1-W4*] to a gray scale gradation (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Regarding claim 6, *Kidder* discloses the first application comprises a word processing application or a spreadsheet application and

the second application comprises an image processing application (*see the entire document, including Column 3, Line 54 - Column 4, Line 12*).

Regarding claim 7, *Megied* discloses a window manager [*e.g., Fig. 2: 111-114, 400*] to detect a window [*e.g., Fig. 1A: W1-W4*] in focus [*e.g., active, selected by a user*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Kidder discloses a window manager [*e.g., Fig. 2: 224, 226*] to detect a window in focus [*e.g., Figs. 1-2: active*], and

in response to detecting that the second widow is in focus,

the display gradation calculator calculating the second display brightness, and

the brightness adjuster adjusting the display brightness of the display unit according to the second display brightness (*see the entire document, including the Abstract and Column 2, Line 1 - Column 4, Line 3*).

Regarding claim 8, this claim is rejected by the reasoning applied in rejecting claim 1; furthermore, **Megied** discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculating means [*e.g., Fig. 2: 400*] for calculating a first display brightness in a first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig. 2: 120, 120'*]; and

a brightness adjusting means [*e.g., Fig. 2: 117*] for adjusting a screen display brightness of the display unit according to the first display brightness (*see the entire document, including the Abstract and Column 2, Line 58 - Column 4, Line 59*),

wherein in response to a second application being displayed in a second window [*e.g., Fig. 1A: W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjusting means adjusting the screen display brightness of the display unit

according to a type of application [*e.g., a bright or dark "type of application" -- i.e., wherein the*

"type of application" is an application exhibiting high luminance or low luminance] of the

second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line*

17).

Should it be shown that **Megied** teaches "*first/second applications displayed in*

first/second windows" subject matter with insufficient specificity:

Kidder discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculating means [*e.g., Fig. 2: 202*] for calculating a first display

brightness in a first application [*e.g., word processing, spreadsheet, graphics illustrator*

program] displayed in a first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjusting means [*e.g., Fig. 2: 224*] for adjusting a screen display brightness

of the display unit according to the first display brightness (*see the entire document, including*

the Abstract and Column 2, Line 1 - Column 4, Line 3),

wherein in response to a second application [*e.g., word processing, spreadsheet, graphics*

illustrator program, email update] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjusting means adjusting the screen display brightness of the display unit

according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the*

boundaries of the active area may be based on such factors as: the type of application program

currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities

currently being executed by the application program; or, preferences submitted by an operator

of the computer system."] of the second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line*

17).

Megied and **Kidder** are analogous art, because they are from the shared inventive field of

display brightness adjustment systems.

Therefore, it would have been obvious to one having ordinary skill in the art at the time

of invention to display **Kidder's** application programs in **Megied's** windows, so as to provide

brightness adjustment control while displaying well known, commercially popular window

applications.

(10) Response to Argument

Claims 1, 2, and 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement.

A. The appellant alleges, "The Specification Complies With The Written Description Requirement For First And Second Applications Displayed In First And Second Windows As Recited In Claim 1" (page 9 of the brief). However, the examiner respectfully disagrees.

The Specification states, "*the screen brightness is adjusted <u>according to the display brightness in the window regardless of the software type</u> displayed in the window. However, the screen brightness may also be adjusted <u>according to the software type displayed in the window; there is no need to find the display brightness in the window in this case</u>*" (page 19, line 18 - page 20, line 2 of the Specification).

Therefore the Specification only discloses two mutually exclusive embodiments/species:

Species 1. Screen brightness is adjusted only according to calculated window brightness -- regardless of the software type.

Species 2. Screen brightness is adjusted only according to software type -- without calculating window brightness.

The appellant acknowledged the above two mutually exclusive embodiments/species by electing Species 1 without traverse in the *26 April 2007* Election.

Page 4 of the *26 April 2007* Election states, "*Applicant elects species 1 drawn to a brightness adjusting system wherein the screen brightness is adjusted <u>according to the display brightness in the window regardless of the software type displayed in the window</u>.*"

However, pending claim 1 was amended on 5 August 2009 so as to combine Species 1

and 2 together into a completely different invention, having no support whatsoever in the

Specification.

Claim 1 now includes the unsupported subject matter: "*a display gradation calculator to*

calculate a first display brightness in a first application displayed in a first window on a display

unit; and

a brightness adjuster to adjust a screen display brightness of the display unit according

to the first display brightness, wherein

in response to a second application being displayed in a second window on the display

unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application of the second application" (lines 2-11).

Similarly, Claim 8 newly recites the unsupported subject matter: "*a display gradation*

calculating means for calculating a first display brightness in a first application displayed in a

first window on a display unit; and

a brightness adjusting means for adjusting a screen display brightness of the display unit

according to the first display brightness,

wherein in response to a second application being displayed in a second window on the

display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjusting means adjusting the screen display brightness of the display unit

according to a type of application of the second application" (lines 2-10).

Therefore, each of newly amended claims 1 and 8 is attempting to claim an inventive

embodiment wherein *window brightness is calculated* <u>and</u> screen brightness is adjusted

according to <u>both</u> the *calculated window brightness* <u>and</u> a *type of application*.

The original disclosure of the invention provides no support for such a combination. In

fact, the Specification clearly teaches away from such a combination by stating that when

window brightness is calculated, the software type is ignored (see page 19, line 18 - page 20, line

2 of the Specification).

B. The appellant alleges, "The Specification Complies With The Written Description

Requirement for Word Processing Application, Spreadsheet Application, And Image Processing

Application, As Recited In Claim 6" (pages 9-10 of the brief). However, the examiner

respectfully disagrees.

As previously discussed, independent Claim 1 now includes the unsupported subject matter: "*a display gradation calculator to <u>calculate a first display brightness in a first application displayed in a first window</u> on a display unit; and*

a brightness adjuster to <u>adjust a screen display brightness of the display unit according to the first display brightness</u>, wherein

in response to a second application being displayed in a second window on the display unit,

the display gradation calculator <u>calculating a second display brightness of the second window</u>, and

the brightness adjuster <u>adjusting the screen display brightness of the display unit according to a type of application of the second application</u>" (lines 2-11).

Dependent Claim 6 additionally recites, "*the first application comprises a word processing application or a spreadsheet application and <u>the second application comprises an image processing application</u>.*"

The combination of the two claims results in the claimed subject matter: "*a display gradation calculator to <u>calculate a first display brightness in [a word processing application or a spreadsheet application] displayed in a first window</u> on a display unit; and*

a brightness adjuster to <u>adjust a screen display brightness of the display unit according to the first display brightness</u>, wherein

in response to [an image processing application] being displayed in a second window on the display unit, the display gradation calculator <u>calculating a second display brightness of the second window</u>, and the brightness adjuster <u>adjusting the screen display brightness of the display unit according to a type of application of the [image processing application]</u>."

The combination of calculating the brightness of a windowed image processing application <u>and</u> adjusting display brightness according to <u>both</u> the calculated brightness of a windowed word processing application (or the calculated brightness of a windowed spreadsheet application) <u>and</u> a type of application of the image processing application is not found in the original disclosure of the invention.

In fact, the Specification clearly teaches away from such a combination by stating that when the software type is relied upon, the window brightness is not calculated (see page 19, line 18 - page 20, line 2 of the Specification).

C. The appellant alleges, "The Specification Compiles With The Enablement Requirement For First And Second Applications Displayed In First And Second Windows As Recited In Claim 1" (page 10 of the brief). However, the examiner respectfully disagrees.

As earlier mentioned, the Specification states, "*the screen brightness is adjusted <u>according to the display brightness in the window regardless of the software type</u> displayed in the window. However, the screen brightness may also be adjusted <u>according to the software type</u>*

displayed in the window; there is no need to find the display brightness in the window in this

case" (page 19, line 18 - page 20, line 2 of the Specification).

Claim 1 newly includes the subject matter: "*a display gradation calculator to calculate a*

first display brightness in a first application displayed in a first window on a display unit; and

a brightness adjuster to adjust a screen display brightness of the display unit according

to the first display brightness, wherein

in response to a second application being displayed in a second window on the display

unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application of the second application" (lines 2-11).

Similarly, Claim 8 newly recites the unsupported subject matter: "*a display gradation*

calculating means for calculating a first display brightness in a first application displayed in a

first window on a display unit; and

a brightness adjusting means for adjusting a screen display brightness of the display unit

according to the first display brightness,

wherein in response to a second application being displayed in a second window on the

display unit,

> *the display gradation calculator <u>calculating a second display brightness of the second</u>*
> *<u>window</u>, and*
>
> *the brightness adjusting means <u>adjusting the screen display brightness of the display unit</u>*
> *<u>according to a type of application of the second application</u>"* (lines 2-10).

Each of newly amended claims 1 and 8 is attempting to claim an inventive embodiment wherein *window brightness is calculated* <u>and</u> screen brightness is adjusted according to <u>both</u> the *calculated window brightness* <u>and</u> a *type of application*.

The original disclosure of the invention provides no enabling disclosure for such a combination. In fact, the Specification clearly teaches away from such a combination by stating that when window brightness is calculated, the software type is ignored (see page 19, line 18 - page 20, line 2 of the Specification).

> *D. The appellant alleges, "The Specification Compiles With The Enablement*
> *Requirement for Word Processing Application, Spreadsheet Application, And Image Processing*
> *Application, As Recited In Claim 6" (pages 10-11 of the brief). However, the examiner*
> *respectfully disagrees.*

As previously discussed, independent Claim 1 now includes the non-enabled subject matter: "*a display gradation calculator to <u>calculate a first display brightness in a first</u>*
<u>application displayed in a first window</u> on a display unit; and

a brightness adjuster to _adjust a screen display brightness of the display unit according to the first display brightness_, wherein

in response to a second application being displayed in a second window on the display unit,

the display gradation calculator _calculating a second display brightness of the second window_, and

the brightness adjuster _adjusting the screen display brightness of the display unit according to a type of application of the second application_" (lines 2-11).

Dependent Claim 6 additionally recites, "_the first application comprises a word processing application or a spreadsheet application and the second application comprises an image processing application_."

The combination of the two claims results in the claimed subject matter: "_a display gradation calculator to calculate a first display brightness in [a word processing application or a spreadsheet application] displayed in a first window_ on a display unit; and

a brightness adjuster to _adjust a screen display brightness of the display unit according to the first display brightness_, wherein

in response to [an image processing application] being displayed in a second window on the display unit, the display gradation calculator _calculating a second display brightness of the second window_, and the brightness adjuster _adjusting the screen display brightness of the display unit according to a type of application of the [image processing application]_."

The combination of calculating the brightness of a windowed image processing

application <u>and</u> adjusting display brightness according to <u>both</u> the calculated brightness of a

windowed word processing application (or the calculated brightness of a windowed spreadsheet

application) <u>and</u> a type of application of the image processing application is not enabled by the

original disclosure of the invention.

In fact, the Specification clearly teaches away from such a combination by stating that

when the software type is relied upon, the window brightness is not calculated (see page 19, line

18 - page 20, line 2 of the Specification).

<u>Claims 1, 2, and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being</u>

<u>indefinite for failing to particularly point out and distinctly claim the subject matter which</u>

<u>applicant regards as the invention.</u>

E. The appellant alleges, "The Term 'Type' Is Not Indefinite, As Recited In Claim 1"

(pages 11-12 of the brief). However, the examiner respectfully disagrees.

The Specification only mentions a "*software type*" (page 19, line 19 of the Specification)

and a "*type of the application software*" (page 5, line 6 of the Specification). The specification

provides no guidance for the meaning of the newly claimed subject matter, "*a type of application*

of the second application" (see claims 1 and 8, last line).

The addition of the word *"type"* to an otherwise definite expression extends the scope of the expression so as to render it indefinite. Ex parte Copenhaver, 109 USPQ 118 (Bd. App. 1955). It would be unclear to one having ordinary skill in the art what *"type"* is intended to convey. See MPEP 2173.05(b).

The Applicant contends, "*claim 6 further delineates types of applications to include these applications*" (pages 11-12 of the brief). The examiner respectfully disagrees.

Claim 6 merely states, "<u>*the first application*</u> *comprises a word processing application or a spreadsheet application and* <u>*the second application*</u> *comprises an image processing application*." The term "*type*" is nowhere to be found in claim 6.

Therefore, while claim 6 provides more details about what the claimed invention means by "*a first/second application,*" it provides no guidance for the meaning of "*a type of application of the second application,*" as claimed.

Moreover, combining the subject matter of claims 1 and 6 results in the indefinite limitation, "*a type of application of the [image processing] application.*"

The appellant also alleges (without support or evidence), "*One of ordinary skill of the art would understand that type of application refers to a purpose for which the software is used*" (page 12 of the brief).

Firstly, no "*software*" is anywhere claimed.

Secondly, the appellant later contradicts this statement by arguing that neither a "*bright application*" (one exhibiting relatively high luminance) nor a "*dark application*" (one exhibiting relatively low luminance) can be considered a "*type of application*" (see pages 15-16 of the brief).

If the "*purpose*" of using the software is at least partly to exhibit high or low luminance, then there should be nothing wrong with considering "*bright/dark applications*" to be "*types of applications.*"

Thirdly, if the term "*type of application*" is intended to be limited in scope only by an undefined intended use (*i.e., a purpose for which the software is used*), then the term is clearly indefinite. The metes and bounds of the claimed invention are unascertainable.

If an artisan uses a word processor for the "*purpose*" of image processing (or creating a spreadsheet), what type of application is it? A word processing application? Or an image processor? Or a spreadsheet application?

F. The appellant alleges, "The Term 'RGB' Is Not Indefinite, As Recited In Claim 2"

(page 12 of the brief).

In light of the appellant's arguments, this ground of rejection is hereby withdrawn.

However, it is respectfully noted that Claim 2 is rejected due the limitation **"*the specific*

area"** (*line 4*) exhibiting insufficient antecedent basis in the claim, and due to the lack of any

concluding period at the end of the claim (*see paragraphs 14-15 on page 8 of the 8 September*

2009 Office action).

The appellant has not provided any arguments pertaining to these grounds of rejections.

G. The appellant alleges, "The Term 'Window' Does Not Omit Essential Elements, As

Recited In Claim 7" (page 12 of the brief). However, the examiner respectfully disagrees.

An omitted structural cooperative relationship results from the claimed subject matter: "***a***

window" (*claim 7, line 3*). It would be unclear to one having ordinary skill in the art whether this

limitation is intended to be identical to, or distinct from, the earlier claimed, "***first window***"

(*claim 1, line 3*) and/or "***second window***" (*claim 1, line 6*). Therefore, the claim is amenable to

two or more plausible claim constructions.

See *Ex parte Miyazaki* (BPAI Precedential 19 November 2008).

H. The appellant alleges, "The Term 'The Display Brightness' Has Antecedent Basis, As

Recited In Claim 7" (page 13 of the brief). However, the examiner respectfully disagrees.

The brief incorrectly states, "*Appellant has corrected the lack of antecedent basis by*

amending the phrase to 'the screen display brightness.' Therefore, amended claim 7 has not lack

of antecedent basis" (page 13 of the brief).

No amendments to the claims have been submitted since the *8 September 2009* Office

action. The copy of claim 7 in the Claims Appendix of the Brief has been improperly changed

from the *5 August 2009* version (*i.e., the last entered amendment*).

The appellant was mailed a Notification of Non-Compliant Appeal Brief on 8 March

2010 requesting that the Claims Appendix of the Brief be corrected. The appellant instead

resubmitted the Brief on 10 May 2010 without correcting the Claims Appendix as requested.

Claim 7 recites the limitation "***the display brightness***" (*line 6*). There is insufficient

antecedent basis for this limitation in the claim. It would be unclear to one having ordinary skill

in the art whether this limitation is intended to refer to the earlier claimed, "***first display***

brightness" (*claim 1, line 2*); "***screen display brightness***" (*claim 1, line 4*); and/or "***second***

display brightness" (*claim 1, line 7*).

I. The appellant alleges, "The Term 'The Display Gradation Calculator' Has Antecedent Basis, As Recited In Claim 8" (page 13 of the brief). However, the examiner respectfully disagrees.

The brief incorrectly states, "*Appellant has corrected the lack of antecedent basis by amending the phrase to 'the display gradation calculating means.' Therefore, amended claim 8 has not lack of antecedent basis*" (page 13 of the brief).

No amendments to the claims have been submitted since the *8 September 2009* Office action. The copy of claim 8 in the Claims Appendix of the Brief has been improperly changed from the *5 August 2009* version (*i.e., the last entered amendment*).

The appellant was mailed a Notification of Non-Compliant Appeal Brief on 8 March 2010 requesting that the Claims Appendix of the Brief be corrected. The appellant instead resubmitted the Brief on 10 May 2010 without correcting the Claims Appendix as requested.

Claim 8 recites the limitation "***the display gradation calculator***" (*line 7*). There is insufficient antecedent basis for this limitation in the claim.

J. The appellant alleges, "The Term 'Type' Is Not Indefinite, As Recited In Claim 8" (pages 13-14 of the brief). However, the examiner respectfully disagrees.

The Specification only mentions a "*software type*" (page 19, line 19 of the Specification) and a "*type of the application software*" (page 5, line 6 of the Specification). The specification provides no guidance for the meaning of the newly claimed subject matter, "*a type of application of the second application*" (claims 1 and 8, last line).

The addition of the word "*type*" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. Ex parte Copenhaver, 109 USPQ 118 (Bd. App. 1955). It would be unclear to one having ordinary skill in the art what "*type*" is intended to convey. See MPEP 2173.05(b).

The appellant alleges (without support or evidence), "*One of ordinary skill of the art would understand that type of application refers to a purpose for which the software is used*" (page 14 of the brief).

Firstly, no "*software*" is anywhere claimed.

Secondly, the appellant later contradicts this statement by arguing that neither a "*bright application*" (one exhibiting relatively high luminance) nor a "*dark application*" (one exhibiting relatively low luminance) can be considered a "*type of application*" (see pages 15-16 of the brief).

If the purpose of using the software is at least partly to exhibit high or low luminance, then there should be nothing wrong with considering "*bright/dark applications*" to be "*types of applications.*"

Thirdly, if the term "*type of application*" is intended to be limited in scope only by an undefined intended use (*i.e., a purpose for which the software is used*), then the term is clearly indefinite. The metes and bounds of the claimed invention are unascertainable.

If an artisan uses a word processor for the "*purpose*" of image processing (or creating a spreadsheet), what type of application is it? A word processing application? Or an image processor? Or a spreadsheet application?

Claims 1, 2, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Megied et al (US 6,556,253 B1).

K. The appellant alleges, "Megied Fails To Disclose A Brightness Adjuster Adjusting A Display Brightness Of A Display Unit According To A Type Of Application Of A Second Application As Recited In Claim 1" (pages 14-16 of the brief). However, the examiner respectfully disagrees.

Megied discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 400*] to calculate a first display brightness in a

first application displayed in a first window [*e.g., Fig. 1A: W1-W4*] on a display unit [*e.g., Fig.

2: 120, 120'*]; and

a brightness adjuster [*e.g., Fig. 2: 117*] to adjust a screen display brightness of the display

unit according to the first display brightness (*see the entire document, including the Abstract and

Column 2, Line 58 - Column 4, Line 59*), wherein

in response to a second application being displayed in a second window [*e.g., Fig. 1A:

W1-W4*] on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application [*e.g., a bright or dark "type of application" -- i.e., wherein the

"type of application" is an application exhibiting high luminance or low luminance*] of the

second application

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line

17*).

The appellant argues, "*Whereas Megied may disclose adjusting brightness in a window,

claim 1 recites adjusting brightness in a window based on a type of application displayed in the

window. As a result, different applications can receive different treatment, and have a more

optimal display brightness for the type of application (e.g., a word processing application

treated differently from an image processing application). On the other hand, Megied appears to*

treat each type of application the same" (page 15 of the brief). However, the examiner

respectfully disagrees.

In response to applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e., *different*

applications can receive different treatment, and have a more optimal display brightness for the

type of application -- such as a word processing application being treated differently from an

image processing application) are not recited in the rejected claims. Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Megied discloses adjusting the screen display brightness of the display unit [*e.g., Fig. 2:*

120, 120'] according to a type of application [*e.g., a bright or dark "type of application" -- i.e.,*

wherein the "type of application" is an application exhibiting high luminance or low luminance]

of the second application being displayed in a window [*e.g., Fig. 1A: W1-W4*] on the display unit

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

The appellant argues, "*Examiner argues that Megied discloses the brightness adjuster*

adjusting the screen display brightness of the display unit according to a type of application in

that one type of application is a bright application and another type of application is a dark

application (see Office Action dated 9/8/2009, pp. 10-11 ; p. 24). Appellant respectfully

disagrees. Examiner's argument, put another way, posits that a bright application is adjusted

based on being of a bright type of application while a dark application is adjusted based on

being of a dark type. Megied does not provide a basis for this argument, nor does the argument

relate to the claim terms at issue. Examiner's argument confuses terminology in equating an

application 'window' in Megied to an application 'type' in claim 1. Megied discusses application

windows and related luminance (e.g., 1:59-60). On the other hand, Megied is silent with regard

to types of application as would be understood by one of ordinary skill of the art and given the

Specification (i.e., Specification discloses application types such as a word processing

application or an image processing application)" (page 15 of the brief). However, the examiner

respectfully disagrees.

Megied analyzes the screen [*e.g., Fig. 1A*] brightness of the display unit [*e.g., Fig. 2: 120,*

120']. When the screen becomes too bright, the brightest application displayed in a window [*e.g.,*

Fig. 1A: W2, W3, or W4] is iteratively reduced in brightness [*e.g., Fig. 3: 304*] until the screen is

lowered to an optimal brightness level. Similarly, when the screen becomes too dark, the darkest

application displayed in a window [*e.g., Fig. 1A: W2, W3, or W4*] is iteratively increased in

brightness [*e.g., Fig. 3: 307*] until the screen is raised to the optimal brightness level (*e.g., see*

Column 4, Line 60 - Column 7, Line 25).

Therefore, when adjusting screen brightness (up or down) to the optimal level, ***Megied***

discloses a bright type of application will be treated completely differently than dark type of

application.

Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kidder (US

5,822,599 A).

L. The appellant alleges, "Kidder Fails To Disclose A Brightness Adjuster Adjusting A

Display Brightness Of A Display Unit According To A Type Of Application Of A Second

Application As Recited In Claim 1" (pages 17-18 of the brief). However, the examiner

respectfully disagrees.

Kidder discloses a brightness adjusting system [*e.g., Fig. 2*], comprising:

a display gradation calculator [*e.g., Fig. 2: 202*] to calculate a first display brightness in a

first application [*e.g., word processing, spreadsheet, graphics illustrator program*] displayed in a

first window [*e.g., Fig. 1: 102*] on a display unit [*e.g., Fig. 2: 204*]; and

a brightness adjuster [*e.g., Fig. 2: 224*] to adjust a screen display brightness of the display

unit according to the first display brightness (*see the entire document, including the Abstract and*

Column 2, Line 1 - Column 4, Line 3), wherein

in response to a second application [*e.g., word processing, spreadsheet, graphics*

illustrator program, email update] being displayed in a second window on the display unit,

the display gradation calculator calculating a second display brightness of the second

window, and

the brightness adjuster adjusting the screen display brightness of the display unit

according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example, the*

boundaries of the active area may be based on such factors as: the type of application program

currently being executed (e.g. word processing, spread sheet, graphics illustrator); the activities

currently being executed by the application program; or, preferences submitted by an operator

of the computer system."] of the second application

(*see the entire document, including Column 4, Line 4 - Column 5, Line 27*).

The appellant argues, "*While Kidder may discriminate between an active area and an*

inactive area, claim 1 recites adjusting brightness in a window based on a type of application.

Kidder fails to disclose treating an application of one type in the active area differently from an

application of another type in the active area" (page 17 of the brief). However, the examiner

respectfully disagrees.

In response to applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e., *treating an*

application of one type in an active area differently from an application of another type in the

active area) are not recited in the rejected claims. Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van*

Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is respectfully noted that although the instant claims recite first and second windows,

the claims do not require that the first and second windows must be displayed at the same time.

Moreover, *Kidder* teaches that when operating in a power management mode, the

operating system determines the active area/window [*e.g., Fig. 1: 102*] of the display screen

[*e.g., Fig. 1: 104*]. The size of this active area/window is made bigger or smaller based on the

"*type of application program*" currently being executed within the active area/window [*e.g., Fig.

1: 102*]. Moreover, the active area/window is driven at full power and full luminance. Whereas,

the inactive area/window [*e.g., Fig. 1: 106*] is turned-off or set to a low luminance state (*e.g., see

Column 3, Line 7 - Column 4, Line 67*).

The appellant argues, "*Examiner argues that Kidder discloses the brightness adjuster*

adjusting the screen display brightness of the display unit according to a type of application in

that the boundaries of the active area in Kidder can be based on a type of application (see Office

Action of 9/9/2009, p. 24). Appellant respectfully disagrees. The boundaries merely identify the

area of a display screen currently being used by an operator. Once the boundaries are identified

in Kidder, pixels appear to be activated the same regardless of the type of application" (page 17

of the brief). However, the examiner respectfully disagrees.

Kidder explains, "*the boundaries of the active area may be based on such factors as: the*

type of application program currently being executed (e.g. word processing, spread sheet,

graphics illustrator); the activities currently being executed by the application program; or,

preferences submitted by an operator of the computer system. For example, if the computer

system is in a power management mode when executing a word processing application, the

operating system of the present invention may be configured to display the line of text currently

being updated, and one line of text above and below the line of text being updated. In a second

example, if a spread sheet application is being executed, the present invention may be configured

to only display the column or row of the spread sheet application presently being utilized"

(Column 3, Line 65 - Column 4, Line 12).

Inherently, if the size of **Kidder's** fully lit, full powered active area/window is made

bigger, the overall screen brightness will increase accordingly. Similarly, if the size of **Kidder's**

active area/window is made smaller, the overall screen brightness will decrease accordingly.

Megied even acknowledges this fact: "*The light output from a given window depends on*

both the window area and the average level of the video signal displayed within its boundary"

(Column 5, Lines 5-6).

In the alternative, claims 1, 2, and 6-8 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Megied et al (US 6,556,253 B1) in view of Kidder (US 5,822,599 A).

M. The appellant alleges, "The claim has limitations not taught by the references" (pages

18-19 of the brief). However, the examiner respectfully disagrees.

Due to the non-disclosed, non-enabled, and indefinite nature (*in particular, the disputed*

meaning of the term, "type of application") of the claimed invention, the claims have

alternatively been rejected under 35 U.S.C. 103(a) as being obvious in view of *Megied* and

Kidder.

Megied discloses adjusting the screen display brightness of the display unit [*e.g., Fig. 2:*

120, 120'] according to a type of application [*e.g., a bright or dark "type of application" -- i.e.,*

wherein the "type of application" is an application exhibiting high luminance or low luminance]

of the second application being displayed in a window [*e.g., Fig. 1A: W1-W4*] on the display unit

(*see the entire document, including the Abstract and Column 1, Line 15 - Column 2, Line 17*).

Megied further discloses that when the screen [*e.g., Fig. 1A*] becomes too bright, the

brightest application displayed in a window [*e.g., Fig. 1A: W2, W3, or W4*] is iteratively reduced

in brightness [*e.g., Fig. 3: 304*] until the screen is lowered to an optimal brightness level. When

the screen becomes too dark, the darkest application displayed in a window [*e.g., Fig. 1A: W2,*

W3, or W4] is iteratively increased in brightness [*e.g., Fig. 3: 307*] until the screen is raised to

the optimal brightness level (*e.g., see Column 4, Line 60 - Column 7, Line 25*).

Should it be shown that *Megied* teaches "*first/second applications displayed in*

first/second windows" subject matter with insufficient specificity:

Kidder discloses adjusting the screen display brightness of the display unit [*e.g., Fig. 2:*

204] according to a type of application [*Column 3, Line 65 - Column 4, Line 3: "For example,*

the boundaries of the active area may be based on such factors as: the type of application

program currently being executed (e.g. word processing, spread sheet, graphics illustrator); the

activities currently being executed by the application program; or, preferences submitted by an

operator of the computer system."] of the second application being displayed in a window [*e.g.,*

Fig. 1: 102] on the display unit (*see the entire document, including Column 4, Line 4 - Column 5,*

Line 27).

Kidder teaches that the size of the active area/window [*e.g., Fig. 1: 102*] is made bigger

or smaller based on the "*type of application program*" currently being executed within the active

area/window [*e.g., Fig. 1: 102*].

Moreover, **Megied** teaches, "*The light output from a given window depends on both the*

window area and the average level of the video signal displayed within its boundary" (Column 5,

Lines 5-6).

Megied and **Kidder** are analogous art, because they are from the shared inventive field of

display brightness adjustment systems.

Therefore, it would have been obvious to one having ordinary skill in the art at the time

of invention to use **Kidder's** automatically resizable types of application programs to form

Megied's windows, so as to provide an optimal screen brightness level while displaying windows

appropriately sized by the type of application being executed.

N. The appellant alleges, "Claims 7 and 8 are also allowable over Megied in view of Kidder (either alone or in combination) for reasons corresponding to those set forth with respect to claim 1" (page 19 of the brief). However, the examiner respectfully disagrees.

Claims 7 and 8 are rejected over **Megied** in view of **Kidder** (either alone or in combination) for reasons corresponding to those set forth with respect to claim 1 above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jeff Piziali/

Primary Examiner, Art Unit 2629

Conferees:

/Chanh Nguyen/
Supervisory Patent Examiner, Art Unit 2629

/Bipin Shalwala/
Supervisory Patent Examiner, Art Unit 2629